

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT DAVID KUHL,

Defendant-Appellant.

UNPUBLISHED
December 28, 1999

No. 203979
Saginaw Circuit Court
LC No. 96-012237 FH

Before: Neff, P.J., and Murphy and J.B.Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of extortion, MCL 750.213; MSA 28.410, and conspiracy to commit extortion, MCL 750.157a; MSA 28.354(1).¹ The trial court sentenced defendant to 180 days in jail, and two years' probation to commence immediately after defendant's release from jail. We affirm.

Codefendant Christina Hakes had a romantic relationship with the victim in this case, a former state representative. Believing that the victim had given her a venereal disease, Hakes removed from the victim's residence a number of videotapes containing footage of her sexual encounters with him. Hakes did not have the victim's permission to remove the videotapes. Hakes then gave the videotapes to defendant, who edited the video footage to create a 14-minute compilation tape of the victim's sexual escapades. Defendant compiled a list of the victim's family members and political colleagues. Hakes then threatened to send each person appearing on defendant's list a copy of the videotape if the victim did not provide her with health insurance coverage to pay for the treatment of her alleged venereal disease, pay her \$100,000 as an "out-of-court settlement" for abuse she allegedly received during the course of her romantic relationship with the victim, and comply with various other demands. Hakes also threatened to send a picture of the victim wearing a bikini top to the Saginaw News if the victim did not comply with her demands. Hakes and defendant timed the threatened disclosures to coincide with a major political fundraising event for the victim's reelection effort.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Defendant first argues that the prosecutor failed to submit sufficient evidence to establish beyond a reasonable doubt that he was guilty of extortion and conspiracy. We disagree. When reviewing the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crimes were proven beyond a reasonable doubt. *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998).

To obtain defendant's conviction for extortion, the prosecutor was required to prove (1) the existence of an oral or written communication maliciously encompassing a threat; (2) that the threat was to injure the person or property of the person threatened; and (3) that the threat was made with the intent either to (a) extort money or to obtain a pecuniary advantage to the one threatening, or (b) to compel the person threatened to do an act against his will. MCL 750.213; MSA 28.410; *People v Fobb*, 145 Mich App 786, 790; 378 NW2d 600 (1985). The malice element of the statute does not contemplate a feeling of ill will toward the person threatened, but is satisfied by the wilful doing of an act with an illegal intent. *Id.* To prove defendant's guilt of extortion as an aider and abettor, the prosecution was required to prove beyond a reasonable doubt (1) that Hakes committed the crime charged; (2) that defendant performed acts or gave encouragement that assisted in the commission of the crime; and (3) that defendant intended the commission of the crime or had knowledge that Hakes intended its commission at the time he gave aid and encouragement. *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995).

On appeal, defendant admits that he assisted Hakes by editing the videotape intended for distribution to those on a list he created which included the victim's family and political colleagues and rivals, and also admits that he knew of Hakes' intent to threaten the victim with release of copies of the videotape if he refused to comply with Hakes' demands. However, defendant argues that his subjective belief that Hakes was entitled to compensation from the victim either constitutes a defense to the charge of extortion or negates the intent element of the offense. Contrary to defendant's position, even the collection of a valid, enforceable debt does not permit malicious threats of injury to one's person, loved ones, or property if payment is not made. *People v Maranian*, 359 Mich 361, 369; 102 NW2d 568 (1960).

Turning to the elements of the crime of extortion, the first and second elements -- a communication maliciously encompassing a threat to injure the person or property of the one threatened -- were proven by evidence that Hakes threatened to send videotapes of herself having sex with the victim to numerous family members and political colleagues of the victim, with the express intent of destroying his reputation if he refused to comply with her demands. It is clear that the phrase "any injury to the person" as used in the extortion statute, MCL 750.213; MSA 28.410, encompasses the threat of emotional injury and threats to destroy the victim's reputation. See *People v Igaz*, 119 Mich App 172, 187-190; 326 NW2d 420, vacated in part on other grounds and remanded for reconsideration of sentencing issue 418 Mich 893 (1983) (threats to send nude photographs of victim to victim's ex-husband, his attorney, and probate court to influence child custody dispute); see also *Manetta v Macomb Co Enforcement Team*, 141 F3d 270, 275-277 (CA 6, 1998) (threats to expose details of victim's adulterous affair to victim's family); *In re Rochkind*, 128 BR 520, 525-526

(Bankr ED Mich, 1991) (threat to use official power to ruin victim's reputation). The third element of extortion -- the intent to obtain pecuniary advantage or compel the person threatened to do an act against his will-- was proven by Hakes' intent to obtain money and health insurance coverage from the victim.

The prosecutor also presented sufficient evidence from which a rational trier of fact could find beyond a reasonable doubt that defendant aided and abetted Hakes. First, the evidence established Hakes' guilt of extortion. Second, evidence showed that defendant performed numerous acts to assist Hakes: he instructed her on how to break into the locked room where the victim kept his videotapes; edited the victim's videotapes to produce the 14-minute videotape that was to be sent out if the victim refused to cooperate; compiled the list of people to whom Hakes should send the videotapes; kept the videotapes for Hakes and delivered them to the spot where the victim was to give Hakes money in exchange for the compromising tapes. Indeed, defendant admits that he provided aid to Hakes. Third, the prosecutor submitted sufficient evidence to establish beyond a reasonable doubt that defendant intended the commission of extortion, or at least had knowledge that Hakes intended to extort the victim at the time defendant aided Hakes. Defendant had stated that the plan to extort the victim had been formulated "a number of months back," that he was angry with the victim and, as noted, admits that he participated with full knowledge that Hakes intended to threaten the victim with the ruin of his reputation if he did not give her what she wanted. That defendant may have believed Hakes was entitled to the money and health coverage has no bearing at all on the question of his guilt or innocence. In light of the foregoing discussion, we conclude there was sufficient evidence to prove defendant's guilt of extortion beyond a reasonable doubt.

Next, defendant argues that the prosecution failed to present sufficient evidence from which a jury could find him guilty of conspiracy beyond a reasonable doubt. We disagree.

To obtain defendant's conviction for conspiracy, the prosecutor was required to prove that Hakes and defendant voluntarily agreed to effectuate the commission of extortion. See *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997). The prosecutor was required to submit sufficient evidence to prove beyond a reasonable doubt that Hakes and defendant specifically intended to further, promote, advance, or pursue an unlawful objective. *Id.*, 347. Proof of the conspiracy may be derived from the circumstances, acts and conduct of the parties. *Id.* Again, defendant admits that he and Hakes agreed to threaten the victim with the ruin of his reputation to force him to give her money and provide her with health insurance coverage. In any event, the evidence submitted was clearly sufficient to prove beyond a reasonable doubt that defendant and Hakes unlawfully agreed and therefore conspired to commit the crime of extortion.

Next, defendant argues that the trial court abused its discretion by refusing to allow him to play for the jury the 14-minute videotape of the victim's sexual encounters. We disagree. At trial, the victim claimed he could not remember specific sexual acts shown on the videotape. Indeed, he testified that he did not watch the entire videotape. Although we agree that the victim's credibility was a critical issue, see *People v Mills*, 450 Mich 61, 67; 537 NW2d 909, modified 450 Mich 1212 (1995), we cannot accept defendant's argument that the fact the videotape actually contained scenes the victim claimed to have forgotten had any relevance whatsoever as to the issue of his credibility. Because the actual

content of the videotape was not relevant to any issue at trial, see *id.*, 67-68, the trial court did not abuse its discretion by refusing to allow the jury to view it. See MRE 402 (Evidence which is not relevant is not admissible).² Further, if any error resulted from the trial court's refusal to admit the videotape, it was harmless in light of the overwhelming evidence of defendant's guilt. See *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999).

Finally, defendant contends that he was denied a fair and impartial trial because the prosecutor engaged in multiple instances of misconduct during his rebuttal argument. Defendant failed to object to these instances of alleged misconduct. Therefore, review of this issue is precluded unless a curative instruction could not have eliminated possible prejudice or the failure to consider the issue would result in a miscarriage of justice. *People v Kelly*, 231 Mich App 627, 638; 588 NW2d 480 (1998). Having carefully reviewed these allegations of misconduct, we conclude that the prosecutor's comments were permissible as replies to issues raised by defense counsel, see *People v Simon*, 174 Mich App 649, 655; 436 NW2d 695 (1989), or otherwise entirely proper. Defendant was not denied a fair and impartial trial.³

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Joseph B. Sullivan

¹ Conspiracy is a common law offense. The statutory provision, MCL 750.157a; MSA 28.354 (1)(a), merely prescribes punishment for conspiring to commit the substantive offense. *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997).

² To the extent that the trial court arguably may have determined that the videotape had minimal relevance as to the issue of the victim's credibility as a witness, but that MRE 403 considerations rendered it inadmissible, the trial court reached the correct result, i.e., exclusion of the evidence, albeit for the wrong reason. Reversal is not warranted under these circumstances. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

³ Defendant also contends that he received ineffective assistance of counsel because his attorney failed to object to the instances of alleged misconduct. We have concluded that the prosecutor's comments were proper. The trial court would have denied any objections to these comments. Defense counsel's duty to render effective assistance did not encompass an obligation to raise meritless objections. *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997).